

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

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| DENNIS WEBSTER, |) | |
| |) | |
| Appellant, |) | |
| |) | |
| vs. |) | OSPI 229-93 |
| |) | |
| TRUSTEES, SCHOOL DISTRICT NO. 30, |) | <u>DECISION AND ORDER</u> |
| LAKE COUNTY, MONTANA, |) | |
| |) | |
| Respondent. |) | |

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PROCEDURAL HISTORY OF THIS APPEAL

The Board of Trustees of the Ronan Public School District (the District) terminated the employment of Dennis Webster, a tenured teacher, on April 30, 1993, for unfitness and violation of the adopted policies of the District. Mr. Webster appealed the Board's termination decision to the Lake County Superintendent of Schools on May 6, 1993. The County Superintendent affirmed the School Board's decision to terminate Mr. Webster for unfitness and violation of the District's policy requiring adequate supervision of students. The County Superintendent concluded that the School Board failed to prove Mr. Webster had violated the District's Drug Free Work Place policy.

Mr. Webster appealed the September 24, 1993 decision of the Lake County Superintendent to the State Superintendent on October

7, 1993. The Board and Appellant filed briefs and presented oral argument to the State Superintendent on January 19, 1994.

STANDARD OF REVIEW

Review of a County Superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, MCA, and adopted by this Superintendent in 10.6.125, ARM. Findings of fact are reviewed under a clearly erroneous standard and conclusions of law are reviewed under an abuse of discretion standard. Harris v. Trustees, Cascade County and Nancy Keenan, 241 Mont. 272, 731 P.2d 1318 (1990). The petitioner bears the burden of showing that he has been prejudiced by a clearly erroneous ruling. Terry v. Board of Regents, 220 Mont. 214, at 217, 714 P.2d 151, at 153 (1986).

DECISION AND ORDER

The State Superintendent has jurisdiction over this matter. Having considered the record of the proceedings before the County Superintendent, briefs submitted by the parties and matters presented at oral argument, this State Superintendent hereby affirms the September 24, 1993 decision of the Lake County Superintendent.

MEMORANDUM OPINION

On April 3 and 4, 1993, Dennis Webster was a certified tenured teacher with the Ronan School District. Mr. Webster's duties with the District included being the "in-class supervisor"

of the Native American Studies class taught by Patrick Chief Stick. Mr. Chief Stick was not a certified teacher. Findings of Fact (FOF) #'s 1 and 2. Mr. Chief Stick scheduled an overnight field trip for his Native American Studies class for April 3 and 4, 1993. The trip included attendance at the opening of the "Sacred Encounters" exhibit at the Museum of the Rockies and the annual MSU students' Native American Pow Wow at Montana State University in Bozeman, Montana. FOF #4.

Mr. Webster, Mr. Chief Stick and nine students from the Native American Studies class arrived in Bozeman at approximately 11:20 p.m. on April 3, 1993. FOF #5. After checking in at the motel and distributing room keys to the students, Mr. Webster and Mr. Chief Stick left the hotel together. During the time Mr. Webster and Mr. Chief Stick were absent from the hotel, the students were left unsupervised in violation of the administrative policy of the Ronan School District. The students were without adult supervision for a minimum of forty-five minutes. FOF #7.

The Ronan School District's administrative policy states as follows:

It is imperative that you (teacher) provide adequate supervision of students assigned to your care. **Students must not be left unsupervised.** You could be found personally liable for damages for a student who is injured while left without proper supervision. (Emphasis added.) FOF #16.

Appellant Webster had received a letter of reprimand for

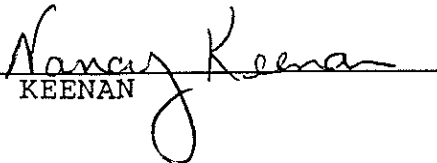
violation of a similar District policy in 1985. FOF#3.

The issue before this Superintendent is whether the County Superintendent correctly affirmed the Ronan Board of Trustees' decision to terminate Dennis Webster for unfitness within the meaning of Section 20-4-207, Montana Code Annotated (MCA). Webster contends that his leaving the students without adult supervision on the April 3 and 4, 1993 field trip to Bozeman does not directly affect the performance of his official duties as required by Yanzick v. School District #23, 196 Mont. 375, 641 P.2d 431 (1982).

Dennis Webster was a tenured teacher employed by the Ronan School District. The student supervision policy required teachers employed by the district to ensure that students in their care were not left unsupervised. Dennis Webster was assigned as the "in-class supervisor" for the Native American Studies class taught by Patrick Chief Stick because Mr. Chief Stick was not a certified teacher. He accepted that assignment. On April 3, 1993, Webster traveled with Mr. Chief Stick and nine students to Bozeman. At the hearing, Webster testified that he took kids on plenty of field trips. Failure to provide supervision in accordance with the District's policy exposed the students to injury and the District to liability.

The fact that no student was injured cannot be used to justify leaving the students unsupervised in violation of District policy.

DATED this 14 day of March, 1995.



NANCY KEENAN

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 15th day of March, 1995, a true and exact copy of the foregoing Order was mailed, postage prepaid, to the following:

Charles E. Erdmann
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Linda Brandon-Kjos
Paralegal
Office of Public Instruction

Webster.Dec

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